

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

1. KAY KILGORE d/b/a L&K,)
INC./BEBB'S FLOWERS,)
)
Plaintiff,) Case No. 15-CV-214-KEW
)
vs.)
)
1. HORTICA INSURANCE &)
EMPLOYEE BENEFITS,)
)
Defendant.)

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PLAINTIFF
AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, Hortica Insurance & Employee Benefits (“Hortica”), hereby submits its Notice of Removal. In support of its Notice of Removal, Hortica alleges and states as follows:

1. The above-captioned matter is a civil action currently pending in Muskogee County District Court, State of Oklahoma. (*See Exhibit 1, Plaintiff's Petition*). This civil lawsuit falls within this Court's original jurisdiction pursuant to 28 U.S.C. § 1332(a). Accordingly, it can be removed to this Court by Hortica pursuant to the provisions of 28 U.S.C. § 1441, because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.
2. On April 2, 2015, Plaintiff, Kay Kilgore d/b/a L & K, Inc./Bebb's Flowers (“Plaintiff”) commenced a civil action in the District Court of Muskogee County, State of Oklahoma, styled as *Kay Kilgore d/b/a L & K, Inc./Bebb's Flowers v. Hortica Insurance & Employee Benefits*, Case No. CJ-2015-139. (*See Exhibit 1, Plaintiffs' Petition*).

3. On April 2, 2015 and May 27, 2015, Plaintiff issued an Alias Summons to Hortica. (*See Exhibit 2, Alias Summons*).
4. On June 1, 2015, Hortica was served with a copy of the Petition and Alias Summons issued on May 27, 2015 via certified mail. (*See Exhibit 3, Alias Summons Returned*).
5. Plaintiff brings the current lawsuit pursuant to a policy of insurance issued by Hortica. Plaintiff alleges that on April 3, 2014, she incurred damage to her business due to a hail and wind storm. (*See Exhibit 1, Plaintiffs' Petition, at ¶ 3*). Plaintiff further claims that she promptly reported the loss and filed a claim with Hortica, however, the claim remains unresolved. (*See Exhibit 1, Plaintiffs' Petition, at ¶ 7*).
6. Plaintiff asserts “[t]he replacement cost value of the damaged property exceeds \$75,000.00.” (*See Exhibit 1, Plaintiffs' Petition, at ¶ 6*). Based upon Plaintiff's claim for relief, it is undisputed that the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.
7. As to the question of diversity between the parties, Plaintiff operates her business in Muskogee County, Oklahoma. (*See Exhibit 1, Plaintiff's Petition, at ¶ 1*). Florists' Mutual Insurance Company is a mutual insurance company domiciled in the State of Illinois operating under the trade name Hortica Insurance & Employee Benefits with its headquarters and principal place of business in Edwardsville, Illinois. Therefore, there is complete diversity of the parties and this matter is properly subject to removal to federal court.
8. The Notice of Removal is filed within thirty (30) days following the receipt by Hortica of Plaintiff's Petition and Alias Summons. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446. (*See Exhibit 3, Alias Summons Returned*).

9. Removal of this case is proper pursuant to 28 U.S.C. §§ 1441 and 1446, in that there is complete diversity of citizenship between Plaintiff, an Oklahoma resident, and Hortica, a foreign corporation. Further, the amount in controversy exceeds the amount of \$75,000.00, exclusive of interest and costs. Therefore, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a).
10. Hortica expressly does not waive any of the defenses and objections set forth in Rule 12(b) of the Federal Rules of Civil Procedure.
11. All state court papers filed in this action at the time of removal and the docket sheet are attached hereto as Exhibit "4".
12. Written notice of the filing of this Notice of Removal will be given promptly to the Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Muskogee County, State of Oklahoma as provided by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Hortica Insurance & Employee Benefits, prays that this action be removed to the United States District Court for the Eastern District of Oklahoma.

Respectfully Submitted,

WILBURN & MASTERSON

By s/David R. Fleury
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CERTIFICATE OF SERVICE

I, DAVID R. FLEURY, hereby certify that on this 9th day of June, 2015, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Bret A. Smith
417 W. Broadway St.
P.O. Box 2250
Muskogee, OK 74402
Attorney for Kay Kilgore d/b/a L&K, Inc./Bebb's Flowers

s/David R. Fleury
DAVID R. FLEURY

/drf